



Oregon Women Lawyers 2016 Fall Conference

Turn Up the Volume

Be Bold, Be Real, Be a Communication Rock Star

Friday, September 23, 2016 | 1:00 p.m. to 5:00 p.m.

*Courtyard Marriott, 550 SW Oak St, Portland
(Across from Big Pink)*

3.25 Practical Skills Credits Approved

✪ Featuring ✪

FORTE Keynote Speaker

Sari de la Motte

FORTE Presenter

Rachel Beohm

Emcee

Laura Craska Cooper, President, Oregon Women Lawyers

Join us for a Celebrating Judicial Diversity Reception at 5:00 p.m.
sponsored by the Oregon Chapter of the Federal Bar Association, the
Oregon Asian Pacific American Bar Association (OAPABA) and OWLS.



Oregon Women Lawyers Fall CLE
September 23, 2016

**Turn Up the Volume:
Be Bold, Be Real, Be a Communication Rock Star**

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Program

OWLS 2016 Fall CLE: TURN UP THE VOLUME

Be Bold, Be Real, Be a Communication Rock Star

Friday, September 23, 2016 | 1:00 p.m. to 5:00 p.m. in Portland

featuring Sari de la Motte and Rachel Boehm, [FORTE](#)

1:00 – 1:15	Welcome and introductions, Laura Craska Cooper, OWLS President
1:15 – 2:15	Keynote: Sari de la Motte
2:15 – 2:30	Katherine H. O’Neil Volunteer Service Award Presented by Sarah J. Crooks
2:30 - 3:30	Break out session (Session A or Session B)*
3:30 - 3:45	Break
3:45 - 4:45	Break out session continued
4:45	Closing remarks followed by Celebrating Judicial Diversity reception



*The session for which you registered is on your name tag

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About FORTE

FORTE provides keynotes for conferences, workshops for organizations, in-house training and coaching for corporations and government agencies and consulting for high-profile jury trials. We have provided communications training since 2001, incorporated as Nonverbal Solutions in 2007, and re-branded as FORTE in 2010.

About Sari

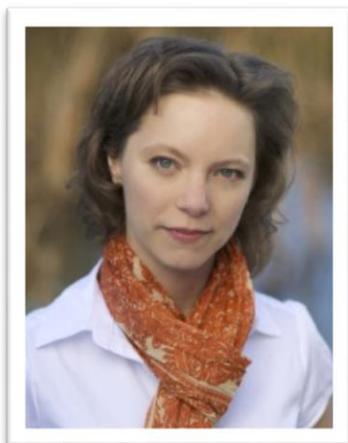


Sari de la Motte is the CEO and founder of FORTE. Sari has trained extensively with an internationally recognized authority in nonverbal communication and leads workshops based in nonverbal communication strategies throughout the United States. She also provides one-on-one coaching to individuals who are seeking to expand influence in the workplace.

Sari assists legal teams on high profile cases, working one-on-one with attorneys to hone their messages and communicate with jurors, judges, and opposing counsel. Because of her unique ability to help attorneys communicate their real selves, she has been dubbed "The Attorney Whisperer." Sari has been a featured speaker for the [Inner Circle of Advocates](#), an invitation-only group consisting of the top 100 trial attorneys in the United States.

Sari is regularly interviewed on TV, radio and in print, and has appeared in [The Atlantic](#), [Huffington Post](#), [The Oregonian](#), [Willamette Week](#) and others. Sari is the author of the eBook *Beyond a Firm Handshake- 21 Ways to Communicate You're the Right Person for the Job* and has just released a new audio product, *Beyond Trial Prep: How to Emotionally, Mentally and Physically Prepare for Trial*. She regularly blogs about her adventures in trial consulting on the FORTE blog, Jam Session (www.nonverbalFORTE.com/blog)

About Rachel



Rachel Beohm has worked for over ten years in the communications field. She researches and analyzes nonverbal communication, and works together with FORTE's founder & CEO, Sari de la Motte, on the development of FORTE's products and services.

Rachel is a master coach and trainer with FORTE. Rachel designs customized curriculum for FORTE's corporate clients and is the firm's principal executive coach. Her work includes performance management/development, strategic nonverbal strategies for improved effectiveness and team facilitation. She developed and teaches FORTE's signature leadership development program, *Step Up to The Mic: How to Look, Talk and Act Like a Leader*. Check out Rachel's thoughts on leadership and workplace issues at www.nonverbalFORTE.com/blog.



Presents:

***Turn Up the Volume:
Be Bold, Be Real,
Be a Communication
Rock Star***

September 23, 2016
Oregon Women Lawyers CLE
1:00 p.m. – 5:00 p.m.

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WORKSHOP OVERVIEW

Turn Up the Volume: Be Bold, Be Real, Be a Communication Rock Star

Keynote: Sari de la Motte

1:15 p.m. – 2:15 p.m.

- What does it mean to Turn Up the Volume?
- Four Components of Presence
- 3 Fears that Hold Us Back
- Overcoming the Obstacles
- Be a Communication Rock Star

Turn Up the Volume: Look, Sound, and Talk Like an Expert

Breakout Session: Rachel Boehm

2:30 p.m. – 4:45 p.m.

Description: Concrete nonverbal skills that will increase your credibility and rapport with others. Participants will learn and practice the skills in the break-out session.

- Presence
- Show Up Like an Expert (Language, Body Language, Voice, Breathing)
- Deal with People Like an Expert
- Handle Sticky Situations Like an Expert
- Authenticity

Turn Up The Volume: Presentations That Kick Ass

Breakout Session: Sari de la Motte

2:30 p.m. – 4:45 p.m.

Description: Concrete nonverbal skills that will help you get and keep an audience's attention. Participants will learn and practice the skills in the break-out session.

- Are You Worth Listening To? (Voice Pattern & Body Language)
- Don't Forget to Breathe!
- Nonverbals of Getting and Keeping Attention (Pause & Gesture)
- Claiming Space

INTRODUCTION: Presence

Presence

- Presence is simply your nonverbal “persona.”
- Everyone has a presence, but is it the presence you want?

Four Components of Presence

- Mind
- Body
- Space
- Others

What Holds You Back?

- Mind: Not present
- Body: Not aware
- Space: Not comfortable
- Others: Not in tune

Notes:

INTRODUCTION: Nonverbal Communication

Congruency

- Nonverbal communication is the biggest part of any message.
- If there is a mismatch between the verbal and nonverbal, people will trust the nonverbal.
- Purposeful nonverbals ensure 100% communication.

Nonverbal Intelligence

- Aware
- Adaptable
- Authentic

Three Components to any Message

Content: What you want to get across

Delivery: How to get it across

Reception: Was it received?

Information is *not* communication.

Notes:

MIND: Overcoming Fear

Fear

- Fear of Failure
- Fear of Negative outcome
- Fear of the Unknown

Antidotes

- Develop Fearlessness
- Practice Courage
- Learn to Let Go

Turn Up the Volume

- See it: Get Clear
- Be it: Act as if
- Speak it: Communicate

Notes:

MIND: Content

Rock Star Presentations

- Meaningful
- Engaging
- Memorable

Three Presentation Mistakes

- Too long.
- Too much info.
- Too jargon-y

A Good Presentation is:

- Short
- Simple
- Sane

A Hook is NOT:

- “Today we’re going to...”
- “So now let me show you...”
- “If you turn to page 13 you’ll see...”
- “Ok, let’s get started!”

A Hook IS:

- “We have a problem.”
- “We have an incredible opportunity.”
- “Who here has ever asked themselves...”

Rule of Threes:

- There are three ways this will impact our industry...
- Three things will help us manage this transition...
- There are three things we need to accomplish...

Stories

- Setting
- Movement
- Dialogue

MIND: Language

Limiting Language

- Examples:
 - “I think...”
 - “In my opinion...”
 - “I feel that/like...”
 - “Maybe...”
- Communicates:
 - “This is just my opinion, so not worth listening to.”
 - “You will probably disagree. (And you’d be right.)”
 - “I have no thoughts, just vague emotional responses.”
 - “I am unsure.”

Expert Language

- Examples:
 - “Here’s what to pay attention to...”
 - “Here’s what this means...”
 - “Here’s how this works...”
 - “Here’s how it will turn out in the end...”

Notes:

MIND: Authenticity

Authenticity

We communicate who we are. Nonverbal techniques are helpful, but ultimately meaningless if we're attempting to cover something up, manipulate or be someone or something other than ourselves.

In either case, you will likely come across as either small or arrogant. Neither is authentic. Confidence is the result of being comfortable enough in your own skin that you can show up without gimmicks.

That said, new techniques aren't always "comfortable" and they take practice. Don't confuse discomfort with inauthenticity.

You are bigger than you think.

Notes:

BODY: What's Your Problem?

As you watch your partner, check what applies:

1. STANCE

My partner:

- _____ stands with weight evenly distributed over both feet.
- _____ stands with weight un-evenly distributed over both feet.
- _____ wobbles back and forth.
- _____ is doing some sort of disco move that's oddly intriguing.

2. GESTURES

My partner:

- _____ gestures with palms down.
- _____ gestures with palms up.
- _____ gestures with palms facing each other.
- _____ doesn't gesture.
- _____ has jazz hands.

3. HEAD

My partner:

- _____ bobs or tilts his/her head as he/she talks.
- _____ holds his/her head still as he/she talks.
- _____ appears to be doing the robot.

4. VOICE

My partner:

- _____ speaks with a rhythmic voice.
- _____ speaks with a flat voice.
- _____ has a weird voice. (Wow, you're mean.)

5. SPACE FILLERS

My partner's preferred space filler is:

- _____ "um/uh"
- _____ "ok"
- _____ "you know"
- _____ "so"
- _____ "hoochie mama"
- _____ other: _____

BODY: Body Language & Voice Pattern

Authoritative Body Language and Voice Pattern

- Body:
 - Weight evenly distributed over both legs
 - Head is straight
 - Feet point forward
 - Palms face downward
- Voice:
 - Flat 
 - Curls down at the ends of statements 
- Communicates:
 - Credibility
 - One-Way Communication
 - Issue-Oriented
 - Comes from our Position (I'm the expert)
 - If used exclusively, will be seen as knowledgeable, but intimidating
- Use when SENDING information.

Approachable Body Language & Voice Pattern

- Body:
 - Weight off to one side
 - Head is tilted and/or nodding
 - Foot is outward
 - Palms face up
- Voice:
 - Lilts 
 - Curls up at the ends of statements 
- Communicates:
 - Openness
 - Dialog
 - Relationship-Oriented
 - Comes from our Person
 - If used exclusively, will be seen as nice, but clueless
- Use when SEEKING information.

Notes:

BODY: Breathing

The Importance of Breathing

Breathing patterns are contagious; the listener takes his/her breathing cues from the speaker.

Shallow breathing or holding your breath releases chemicals of fight or flight. Low abdominal breathing produces chemicals of calmness.

When you breathe well you communicate that you have confidence to deliver the message and trust in the other person.

Good breathing grounds us and helps us communicate with confidence.

Authenticity shows people WHO you are. Breathing shows people HOW you are.

Shallow Breathing

- Communicates we are in fight-or-flight
 - Not thinking clearly
 - Feeling threatened and only looking out for ourselves
 - Nervous and agitated as opposed to competent
- Affects every other aspect of nonverbal communication

Deep Breathing

- Communicates we are comfortable in the present situation
 - Rational
 - Safe
 - Competent and confident
- Affects the body
 - Gets oxygen to the brain
 - Relaxes the body/muscles
 - Releases “feel good” hormones (prolactin, oxytocin) into the body
- Helps you stay present
 - Breathing is physical—keeps you grounded
 - Breathing affects your emotions—keeps you in touch
 - Breathing happens in the present moment—increases your awareness

Notes:

BODY: Breathing, continued

Voice Tone

- Voice Tone = Voice Pattern + Breathing
- Authoritative
 - With shallow breathing = stressed, angry, impatient
 - With relaxed breathing = definitive, credible
- Approachable
 - With shallow breathing = whiney, petulant
 - With relaxed breathing = open, friendly

Signs of Different Breathing Patterns

Shallow Breathing/Holding Breath

Stiff or no movement

Broken sentences, gasps

Head jerks back and freezes

Shoulders go up and down

Deep Breathing

Smooth gestures/still

Full sentences, finds it easy to talk

Head rests squarely over shoulders

Abdomen goes in and out

Notes:

BODY: Gesturing & Pause

Gesturing and Pause

- Pause allows us to breathe and is the #1 confidence nonverbal.
- To get and maintain attention, gesture while talking, but freeze the hands when pausing, only moving them again once you begin speaking.
- Avoid dropping the hands, curling the fingers, or bringing the arms back to the waist.
- Close the lips during the pause. Avoid parting the lips before speaking and gesturing. Time them to happen all at once.

When Listening:

- Avoid
 - Hands clasped in front (fig leaf)
 - Hands clasped behind back
 - Hands in pockets
 - Arms crossed in front
 - Hands on the hips
- Instead
 - Arms at side
 - One arm parallel to the ground (helps to have something in your hand)
 - Both arms parallel to the ground

Notes:

SPACE

Be As Big As Your Group

- The bigger the group, the bigger the gesture.
- The bigger the group, the longer the pause.

Claiming Space

- Ground yourself.
- Become aware of the space you wish to claim.
- Breathe into the space.
- Take in the space with your eyes.
- Actively decide to send your presence outward.
- Hold the space in your awareness as you speak.
- Use gestures and pausing that are big enough for the space.

Opposite Side of the Room

- Walk *slowly* to the opposite side of the room.
- BREATHE as you walk.
- Nod the head as you walk.
- Cock the ear towards the person speaking.
- Plant the feet once you arrive and re-establish eye contact.
- Watch the group peripherally.

Location holds memory.

Recovery

- 1) Break Eye Contact: Look down.
- 2) Move to a new location.
- 3) Breathe while moving.

Notes:

OTHERS: Eye Contact

Eye Contact

- Eye Contact ≠ Respect; Eye Contact = Engagement
- Difficulties with Eye Contact:
 - Eye Contact makes things personal.
 - Eye Contact connects information.
 - Eye Contact inhibits mental processing.
- Solution: When the information is negative, look at a visual; when the information is positive, make eye contact.

Refinements

- Sit side-by-side or at 90 degrees.
- Look where you point.
- Don't hold the visual. Let it go.
- Turn your feet.

Notes:

OTHERS: Adapting

When it Comes to Communication, Throw Out the Golden Rule

We've all been taught to treat others the way we want to be treated. Unfortunately, this doesn't work in terms of communication. We need to treat others the way *they* want to be treated if we want to become a rock star communicator.

Permission

Permission is how receptive people are to us and our ideas. We increase permission when we can read what people want and give it to them.

Notes:

Communication Break-Down: The Attorney Whisperer Answers Your Questions

You can always tell the good ones. You try to catch them in court, sliding into a wooden bench at the courthouse when you have a free minute, just to get a glimpse of them in action. They've got charisma. They've got chutzpah. They've got...something that's hard to describe.

What they've got are excellent communication skills.

Talking with clients, it amazes me that most attorneys get little to no training in how to communicate. But I can't think of a higher goal—particularly for trial attorneys—than to make sure you're a kick-ass communicator.

There are zillions of books on communication. There are seminars and workshops and online courses. But unlike most of the communication gurus out there that only focus on what to say, here at FORTE we focus on *how* to say it. Does the content of your message matter? Absolutely. But it loses its impact if the delivery isn't spot on. But this isn't that "body language stuff" that focus on reading other people and hallucinating about what they might be thinking or feeling, I'm going to show you how to increase your *own* nonverbal intelligence.

The majority of our communication is nonverbal. We've all experienced the power of nonverbal communication in our personal lives. We know when our spouse or partner isn't "fine," even when they say they are, just from tone of voice, lack of eye contact, and body positioning. They don't need to say it, we just know.

The attorneys we all admire aren't necessarily any smarter or experienced or better looking. They simply out-communicate everybody else. They not only know their stuff, *they can communicate it*. Jurors aren't persuaded solely by convincing arguments; they're persuaded by convincing people. We live in a fast-paced, sound-bite, what's-in-it-for-me society. You may be the most brilliant, capable and dedicated lawyer out there, but if you can't communicate it, who cares?

Take, for example, a hearing I observed recently. The appellate lawyer, whom I'm told is quite brilliant, spoke in a timid, whispery voice when addressing the judge. She stood with her weight over to one side, palms facing up and phrased most of her statements as questions. She sounded unsure of herself. It was hard to take her seriously, even though her arguments were right on the money.

Still, people will read that and think, "Well, sure. That's common knowledge! Everyone knows you need to speak authoritatively to be taken seriously." The problem is that most people are not aware of what they're communicating nonverbally. It's one thing to understand these concepts. It's a completely different thing to incorporate them into your life.

Take breathing, for example. How you breathe affects every single aspect of communication, from your tone of voice to whether or not people feel safe. And, yet, most attorneys are completely and totally unaware of the fact that they hold their breath when waiting for a juror to answer a voir dire question, or that they rarely pause and breathe during opening, causing the jurors to hold their breath. Simple? Yes. Easy? No.

Not to mention that how we're communicating is only half of the equation. We also need to keep an eye out for how our messages are being received.

But how many of us are aware of whether our messages are landing? Or how to alter our approach if we can tell things aren't going well? This is what nonverbal intelligence buys you—the ability to adapt in the moment to make sure good communication happens. Nonverbal communication is observable, which means you can tell instantly whether or not your message is landing. It's so much more than simplified advice like "Avoid crossing your arms" or "Make sure to smile!"

If you know what to look for, you can watch carefully as you deliver your message and gauge the response. And here's the important part: if you're not getting the response you were hoping for, you can change what you're doing. This is what separates the good lawyers from the rock star lawyers.

Welcome to "Communication Break-Down: The Attorney Whisperer Answers Your Questions." Through a series of articles where I answer questions I've received both online and from clients, we'll chart a course to nonverbal intelligence in the courtroom. We'll look at the three ingredients of nonverbal intelligence: awareness, adaptability, and authenticity. We'll discuss charisma. We'll talk about whether you should use the hobby question in voir dire and how to talk to jurors about non-economic damages. We'll discuss all of this and more.

I encourage you to email me with any questions at sari@nonverbalforte.com. For more reading on nonverbal communication, sign up for my weekly newsletter at www.nonverbalforte.com or check out our free videos, products for sale or attend a live event.

Sari de la Motte

Dear Sari,

“I understand that effective body language can increase my success in court. But I have no idea what I’m communicating nonverbally! How do I increase my skills in this area?”

I hear you! Years ago, I watched a videotape of myself delivering a keynote. Presentations are a big part of my job; I expected to find some room for improvement, but also thought I had gotten rid of all my weird nonverbal quirks. Imagine my horror as I watched myself sweep my hair off my forehead *every five seconds for the entire 45 minutes*.

I began growing my bangs out immediately.

Perhaps you tug nervously at your sleeve, shake your foot uncontrollably or pace from side to side. As anyone who’s been videotaped can attest, most of us have no idea what we’re communicating nonverbally. Yet we seem to have a pretty good idea of what others are communicating, especially the people we’re close to.

Why are we so in tune with the body language and voice patterns of others but completely oblivious to our own? Simple: We can see other people, but—outside of being videotaped—we can’t see ourselves. We’re hardwired to understand and interpret nonverbal cues. As babies, we scan the faces of our mothers looking for reassurance and love, and later we do the same with our friends, lovers, and eventual spouses.

Three ingredients to nonverbal intelligence: Awareness, Adaptability, Authenticity. Let’s look at all three.

The first step is to increase your awareness. What are you communicating nonverbally? It’s time to get the video camera out. Can you tape yourself presenting a CLE? Are video cameras allowed in the courtroom where you are trying a case? If so, videotape the trial. If these aren’t options then use the camera on your phone to videotape yourself as you practice your opening in your office. Watch for anything distracting. Then start to notice how you stand: with weight over both feet or over to one sided? Palms facing up or palms facing down? How does your voice sound? Does it curl up at the ends of statements or curl down?

Once you get a sense of your style, the next step is to adapt. You want to use authoritative body language (weight over both feet, palms face down, voice curls down) when *sending* information. You want to use approachable body language (weight to one side, palms face up, voice curls down) when *seeking* information. Using authoritative body language says to your audience, “I know what I’m talking about.” Using approachable body language says, “I want to hear from you.” We need both in court...and in life.

But is this authentic?

Years ago, a woman approached me after a workshop and said, “The authoritative nonverbals don’t feel natural. It seems inauthentic to use them. Like I’m not being myself. I’m just naturally approachable.”

“Do you have children?” I asked.

“Oh, yes,” she said. “I have a two-year-old daughter.”

“Imagine you’re walking down the street, your daughter’s hand in yours, when all of the sudden, a man approaches you,” I said. “As he walks toward you and your daughter, all of your warning bells go off.” Her eyes suddenly narrowed and her breathing became more rapid. “Demonstrate for me what you’d say to him.”

Without hesitation she held a hand out and said, “Stop right there. Do not come any closer.” Her voice curled down. There wasn’t a hint of indecision or question. She spoke authoritatively and credibly. Several participants who stood talking in small groups stopped and looked over.

Shocked, she said, “I guess I do have authoritative in me.”

Authenticity is bigger than we think. As we develop our sense of self, we create a box marked “me” and rarely deviate from it. We don’t recognize that we can increase our communication facility and still be “us.” We tend to compartmentalize – this is the way I speak in court, this is the way I talk to my spouse, this is the way I order coffee – without realizing that we can and should communicate differently depending on the needs of our audience.

Grab every opportunity you can to observe the nonverbal communication of yourself and others. People watch at the mall. Engage with the barista at Starbucks. Observe jurors in other trials. Awareness is the first level of learning. As you become more aware nonverbal behavior your communicate will start to change. And before you know it, you’ll increase your nonverbal intelligence.

Dear Sari,

“I know you’re a ‘body language expert.’ Can you give me some tips on what to look for when picking a jury?”

Well, for starters, let me be really clear and say I’m –not- a body language expert. Here at FORTE we don’t focus on reading the body language of jurors. For a few reasons: 1) There isn’t any good science backing up that this can be done with any real accuracy. 2) Focusing on your *own* nonverbal communication is much more helpful in trial. 3) We often *misread* body language leading us to communicate based on incorrect information.

Recently, an attorney relayed this story. Starting with voir dire and continuing throughout trial, he noticed that a specific juror was exhibiting what he called “negative body language.” The juror scowled, slouched down in his seat, and folded his arms across his chest. The body language was so pronounced, in fact, that the attorney became *obsessed* with it. He kept thinking, “This juror doesn’t like me,” and worried as the jury began deliberations. The jury came back: 11–1. As he walked down the hall afterwards, this very same juror approached him and said, “I just want you to know that I think you should have won. In fact,” he said, “I was the lone person in your favor.”

Because we’re so in tune with other people’s body language, we believe we can use nonverbal communication to ferret out what people are thinking. This is a grave mistake.

We can get a fairly good read on emotion, but body language can’t tell us what thoughts people are having. For example, I can get a sense, after walking into a courtroom, if opposing counsel is agitated or tense by observing nonverbal behavior. But I can’t know *why* they’re tense: perhaps their star witness went missing, or maybe they feel unprepared, or perhaps they just received bad news about their ailing grandmother.

We don’t increase our nonverbal intelligence in an attempt to read the thoughts of other people. We increase our nonverbal awareness to ensure that good communication happens.

Here’s what you *can* do in trial to increase your chances of choosing a receptive jury: **conduct a good voir dire**. Ask questions that provide jurors context about the case instead of asking about their hobbies or passions. This instantly turns off jurors. They know you aren’t really interested in them as people, and find these types of questions manipulative. When jurors answer your questions, **listen**. Most attorneys are too worried about what the answer means or how they plan to follow up to actually **be present** with the juror right in front of them. Remember: if we do a good job of listening to jurors in voir dire, they’ll return the favor and listen to us during opening.

If you do a good job of asking questions that get at juror beliefs and then listen, *really* listen to their answers I’m confident you won’t have any trouble picking a jury.

Dear Sari,

“Body language is important, I agree. But doesn’t what you say have importance too?”

Absolutely. Even though the nonverbal component of our communication is strongest, that doesn’t mean that the content doesn’t matter. Every message includes three parts. First, there’s the content: *What* you say. Then there’s the delivery: *How* you say it. Finally, there’s the reception: Did the listener *receive* your intended message? An effective message requires all three parts.

Here are some tips to help you increase your facility in each area:

Content. Are you using 30 words when 15 would do? Jurors tune out when there are too many words.

Cut back any and all extraneous verbiage. For example, many lawyers “announce” what they’re about to do in opening, such as, “Now allow me to show you...” or “Next, I’m going to tell you about...” Avoid this. Just show and tell. No need to announce.

In addition, once you’ve made your point, *leave* it. Resist the urge to repeat yourself or continually add on to what was previously a strong point. Jurors bore easily.

Delivery. Once you’ve pared down your message, deliver it powerfully. Increase awareness of your own nonverbal communication to help jurors trust you and your message. We communicate credibility by using **authoritative** body language and voice pattern. To do this:

- Stand straight with weight over both feet.
- Turn the palms of your hands downward.
- Keep your head still—this results in a flat, smooth voice.
- Curl your voice downward at the ends of statements (Think James Bond: “Bond, James Bond.”)
- Breathe, so you sound definitive instead of angry or impatient.

Other times, you’ll want to communicate that you’re open, friendly and want to engage with jurors. (*Voir dire*, for example.) This requires **approachable** body language and voice pattern. To do this:

- Stand with your weight over to one side.
- Turn the palms of your hands upward.
- Bob the head slightly—this results in a rhythmic, lively voice.
- Curl the voice upward at the ends of statements. (Think Mr. Rogers: “Won’t you be my neighbor?”)
- Breathe, so you sound friendly and open, not tentative or lacking in confidence.

Reception. Finally, watch how people respond to your messages. Ignore meaningless body language cues like crossed arms (the juror could be cold), frowning (the juror

could have a stomach ache), and the like. Instead, focus on breathing. You can pick up on breathing cues by watching nonverbal behavior. Have the jurors jerked their heads back? Are their shoulders pulled up? Do they appear “frozen”? Breathing is the only reliable indicator of receptivity. When your listener has stopped breathing, you’ve lost receptivity. Try something else.

We can’t use body language to read the thoughts of others, but we can use nonverbal communication to effectively gauge receptivity and communicate our messages. In fact, we must. Words are important, but words alone don’t get the job done.

Dear Sari,

“Can you recommend a good book on body language?”

Unfortunately, no. And here’s why: most of the body language books out there are so formulaic or ridiculous I hesitate to recommend them even if they have some good information.

For example, I recently I picked up a book written by a “body language expert” who primarily works in the legal field. She talked about how she intently watches potential jurors, looking for tapping feet, clasping or unclasping of hands, crossed arms and the like. She even goes as far as to use her sense of smell: as jurors walk in she tries to pick up perfume or body odor.

Really?

I’ve worked with trial attorneys for years, and I can say, without hesitation, that of ALL of the things lawyers have to do and think about during trial, “smelling jurors” is not at the top of the list.

And yet, I get it. There is a deep seated need to put our hands on some sort of a “formula” that can, if not guarantee us results, at least predispose them in our favor. But the number one thing a trial attorney needs in court (or anyone looking to improve their communication, really) is the *ability to adapt in the moment*. And therein lies the problem: when we buy into a “formula” we stop being aware, and it all goes downhill. It feels “safer” to believe that there’s only one way to conduct voir dire, opening statements or cross examination, but the truth of the matter is -as Rick Friedman points out in his book *On Becoming a Trial Lawyer*- if you’re looking for safety, you’re in the wrong profession.

Increase your nonverbal intelligence and you’ll increase your success in the courtroom or anywhere else. Why nonverbal communication? Because it’s observable. If you want to get good at adapting to your circumstances, you have to be aware of what’s going on around you. To do that, you need to be able to observe something.

And no, it’s not random body language or body odor. (May I just register my creeped-outness here?) I’m not suggesting you watch other people’s body language and *hallucinate* (because that’s really what you’ll end up doing) about what they might be thinking or feeling. What I am suggesting is that you start to notice how people are responding to what you’re doing, and adapt your communication based on that information. Stop trying to label that information and put people in boxes like many of the books suggest. Instead, watch to see how people are responding to you.

What someone’s body odor communicates—outside of the fact that they might need to take a shower—is beyond me, but smell away, if you must.

On second thought, please don't.

For videos on nonverbal communication that avoid formulas and, uh, what Old Spice means (kidding!) visit our website at www.nonverbalforte.com.

Dear Sari,

“How close should I stand to the jury?”

Three and a half feet.

Uh, I have no idea! Every jury is different. Some juries want you to stay far away and others will let you sit in their lap. How close you get is determined by how much permission you have.

What is the first thing that comes to mind when you hear the word “permission?” I think back to childhood, when my parents decided what I could and couldn’t do. Now that I’m an adult, I don’t need to ask anyone for permission, but it still exists. Only now the permission is nonverbal.

In this case, think of permission as how *receptive* people are to you or your message. When you have lots of permission, people are open and receptive to you and your ideas. When you don’t have permission, people are closed to you and your ideas. The more you try to get them to hear you out, the more they close up. They might even become angry.

In many ways, we had it easier in childhood. Sure we couldn’t always do what we wanted, but at least the message was clear. Now, though, we can’t ask jurors how they’d like us to handle witnesses or what they’d like to see in an opening statement. We can’t check in with them during cross -at least not verbally- to see how we’re doing. And so we go along, trying our best until we’ve tripped over some invisible line and lost permission with the jury.

Breathing is the only reliable indicator of permission. You can tell when someone has stopped breathing when the head jerks back, the shoulders pull up and the body appears “frozen.” If you notice any of these indicators, you’ve lost permission. Time to change course. But what if the nonverbals are less pronounced?

Try this: Sit across from someone. Tell them you will talk for two-to-three minutes (any topic will do) and that sometime during your “speech” they should hold their breath. Tell them to do it without any exaggerated nonverbals. Once you sense the person has stopped breathing, check in.

I did this exercise with a group of attorneys recently, and the majority of the participants could tell almost instantly when their listener had stopped breathing. We’re very in tune with the breathing patterns of the people around us. When you get the sense that something is “off” with your jury, you’re most likely picking up that they have stopped breathing.

The nonverbally intelligent attorney allows the jury to influence every decision they make: from how close they stand to them, to how hard they are on witnesses, to how much information they can include in opening.

So how can we adapt our communication and increase receptivity with a jury?

Breathe.

Breathing patterns are contagious. If you breathe well, you'll assist jurors in breathing well. When the jury is breathing they are open to your ideas. We take our breathing cues from the speaker. Breathe if you want your jury to breathe.

Breathing well also communicates leadership and confidence. When we breathe well under stressful situations, we communicate that we believe the facts will speak for themselves and that the jury can trust us to navigate them through the process. Jurors are looking for a leader. You can't be a leader unless you breathe well.

Communicate that you're the likeable expert.

You can communicate this nonverbally through the use of *authoritative* and *approachable* nonverbals. Authoritative nonverbals communicate your credibility. Approachable nonverbals communicate that you care. When communicating your expertise, speak with your voice curling down, stand with weight evenly and gesture with palms facing down. When communicating your likeability, shift your weight to one side, speak with a voice that curls up and gesture with palms up.

Get your timing down.

Keep this general rule in mind: use *authoritative* nonverbals when sending information and use *approachable* nonverbals when seeking information. But remember: the listener always decides what's appropriate. Watch and sense how the jury is breathing. If they've stopped breathing, *switch your approach*.

One final note: permission is not the same thing as agreement. Just because you have a lot of permission with a jury doesn't mean they agree with you. It means they are receptive to you and your ideas. They are willing to hear you out. Permission is the starting place. It can lead to agreement, but you can't get to agreement without permission.

Trial isn't scripted. There's no single formula that ensures a winning verdict. But if we keep an eye on how the jury responds to what we're doing and adapt our approach we *will* increase permission.

So how close do you get to the jury? They will tell you... if you know what to look for.

Dear Sari,

“How do you create rapport with a jury?”

I'm sure you've heard of the “mirroring” technique – mimicking body language to establish “rapport.” Perhaps you've heard this advice: “In voir dire, if a juror you are talking to tilts his head, tilt yours the same way. Try to mirror his body position as much as possible. And at a deposition, mirror the witness as much as you can. The witness will not know why, but the witness will like you and give you more info.”

Many attorneys ask me what I think about mirroring and my response is to ask them how it feels to be imitated. Does it make you feel like you have common ground to see someone copying everything you're doing? It feels pretty creepy. Mirroring reeks of manipulation and can backfire with jurors.

It's easy to tell when two people are in sync with each other. Watch my sister and me for about five minutes and you'll see something interesting happen: we adopt each other's body language without even knowing it. Halfway through our conversation we'll suddenly notice that we both have one leg tucked underneath us, our heads are both cocked to the side, and we're both furiously picking at our nails.

Instead of “mirroring,” focus on creating *real* connections with jurors rather than fake ones. We can't read nonverbal behavior and decipher what someone is thinking, but nonverbal behavior *can* clue us into how a juror or witness prefers to communicate. If we accommodate this need, permission (how receptive someone is to you or your message) goes up.

For example, if I see authoritative nonverbals (still head, curled down voice, palms face down) and limited eye contact, this tells me the person is focused on the issue. I respond two ways:

- 1) I get right to the issue, and
- 2) I utilize authoritative nonverbals.

If someone uses approachable nonverbals (bobbing head, curled up voice, palms face up) and gives me lots of eye contact, this tells me the person is focused on the relationship. I respond two ways:

- 1) I spend time tending to the relationship, and
- 2) I utilize approachable nonverbals.

I often tell the story in seminars about the time my husband and I attempted to buy a flat screen television. We had done our research, knew the store had it in stock, and had printed out the exact model we wanted. When the salesperson approached I looked at the paper I had brought with me, and curling my voice down said, “We would like to purchase this television.” I made no eye contact. I was clearly communicating *get to the*

issue. But how did the salesperson respond? He went to relationship. He asked all sorts of questions about me, the t.v., where we were going to put it, how we had decided on that one...he was following his sales script: connect with the customer. But because he ignored my nonverbal cues he had absolutely zero permission with me.

Everyone wants to be heard and understood. By adapting your communication style to the person you're with, you convey understanding and acceptance.

In a way, it is easier to mirror jurors because we're only play-acting. We're letting them tell us what to do. It's safer. To own who we are and communicate on purpose is scarier. When we watch and adapt, we communicate, "I want to engage with you." We may be rejected. And that's the problem with authenticity: it requires us to be vulnerable.

Adapt your communication to meet jurors and witnesses where they are, instead of forcing a fake connection. You'll get better results. Match nonverbals not to manipulate, but to express understanding. In other words, instead of *acting* as though you care, *actually* care.

Dear Sari,

“I usually start voir dire with a discussion about bias, a little humorous story about myself and then warm up the jury with some questions about their hobbies. I don’t feel right about just jumping in; I feel I need to create some rapport first. I hear you are opposed to this approach. Can you explain why?”

Sure. I’ll give you the simple answer and then a longer explanation. The simple answer is this: you can’t create rapport that way.

Here’s the longer explanation: jurors don’t trust you. At all. *Especially* at the beginning of voir dire. They are on high alert for any kind of manipulation. They think that you will do anything to “sway” them. Think about it: jurors haven’t chosen to be there. This is extremely threatening to their autonomy. They don’t know how the process works, and in many cases, don’t even know when lunch is. All they know is that they’ve been waiting around, sometimes for hours, for this show to get on the road, and the **ONLY** thing they’re looking forward to is getting the hell out of there. Getting up and asking jurors about their hobbies is like taking a group of hostages and then asking what they like to do for fun.

Attorneys, keep in mind that communication tends to fall into two buckets: relationship and issue. Most attorneys strive for relationship in voir dire; they want to get jurors to like and trust them. But the problem is jurors have no desire to have a relationship with you. (I know, the truth hurts.) In most cases, they don’t want to be there at all! In other words, **jurors start the process in issue mode**. Most of them are thinking, “How does this work, and why am I here?” If we truly want to create a relationship with jurors, we have to **meet them where they are**. That means starting with issue-oriented communication.

This reminds me of a story I tell often in seminars: an attorney friend suggested I make a connection with a friend of his. I reached out and she suggested I come by her office for a chat. I went, expecting the interaction to be a social call. To my surprise, once I arrived she was ALL business. I could have insisted on small talk, but instead I picked up on her cues and communicated about the issue (she wanted a workshop for her staff). Once we were done discussing the workshop, however, she leaned back and asked me a personal question. That was my cue that she was now ready to go to relationship mode. Acknowledging her preference for discussing the issue eventually got me *permission*: she was now open to relationship.

This is also true in court. I recommend to my clients that they start voir dire with a simple “Good morning” (or afternoon, as it may be). Then, jump right into the issue at hand: “This case is about a car crash. Who here has been in a car crash?” What you’ll find is starting with issue-oriented communication often allows you to move to relationship-oriented communication as voir dire continues. But please, for the love of god, don’t ever ask them about their hobbies.

Dear Sari,

“I attend several CLE’s throughout the year and I always hear people talking about courtroom ‘leadership.’ I think I get what they mean—that you should demonstrate leadership skills at trial. But I’m not sure how to do this or even why it’s important. What’s your advice?”

Great question. Jurors are looking for a leader. The entire process of voir dire is disorienting. Jurors don’t know how it works, if they’ll be picked, who you are, what the trial is about or what they’re supposed to do. They need someone to lead them through the process. When that person shows up, jurors feel safe and are more receptive and open. To increase your receptivity with jurors, you need to be that leader.

But here’s the important part: *Leadership is communicated.* You can think you’re a leader, but unless you can communicate it, no one else will see you that way. So how is leadership communicated? Through breathing.

Authenticity shows people who you are, but breathing shows people *how* you are. If you are not breathing well, or god forbid, holding your breath in court, you activate your fight or flight response. When you are in fight or flight, you are in survival mode, which means you’re looking out for yourself. No one is going to follow someone who is only looking out for themselves! Breathing well in court communicates, “I’ve got this,” and shows jurors that you are a safe, steady presence and someone worthy of following.

One of the most extraordinary examples of leadership communicated through breathing is that of Captain Sullenberger. In 2009, after a double bird strike which killed both engines, Captain Sullenberger made the decision to land a commercial jet with 155 people on board in the Hudson River. A few seconds before the plane hit the water, Captain Sullenberger came on the intercom and said three words which passengers later said calmed them down immediately.

What were those three words? Were they words of comfort like, “We’ll be ok” or “Don’t you worry”? No, the three words Captain Sullenberger said were...

“Brace for impact.”

Brace for impact? How on earth are those words comforting? **They aren’t.** That’s the point. It isn’t –what– Captain Sullenberger said, it’s *how* he said it that brought assurance to the passengers. He was in command of his breathing. He was calm. He was confident. And although the words he said were, “Brace for impact,” the message the passengers received was, “We’re in good hands.”

THAT is leadership.

If you want to show up as a leader in court, *get your breathing under control.* The jury wants to know you’ve got the knowledge, experience, and skill to handle the stress of

trial. You communicate your competence through breathing. Breathe deeply, and often, and you'll start to see your leadership grow in court.

Dear Sari,

“I’ve heard you speak and talk about presence. Can you tell me more about what you mean when you use the word ‘presence’?”

Sure. Years ago, I assisted a client with a presentation for the House of Commons in England. One morning she arrived for her session and announced she had made several changes to her speech. As she delivered her new presentation, my heart sank. She had substituted her engaging stories and personal insights with technical language and dry information that was hard to follow. I got the sense she feared she wasn’t “credible” enough and thought the new content would sound more professional. Instead, she ended up creating a boring presentation devoid of any personality.

As we discussed the changes, she grew more and more frustrated. When I paused, she blurted out, “Was there *anything* you liked about it?” I hesitated for a moment and said, “No.”

Shocked, she sank into a nearby chair and *burst into tears*. She then stood up, said, “I’ll be back in a minute,” and left.

I wondered if she was going to come back. All indicators pointed to no. But about 5 minutes later, she returned. I asked her if she was ok, and, after blowing her nose and dabbing her eyes she said, “Yes. Let’s try it again.”

And what happened next was so incredible I’ve never forgotten it. As she gave her speech she accessed something that wasn’t there before. Not only were the stories back, and the personal insights, and all the nonverbal skills we’d worked on for weeks, but SHE SHOWED UP. Not the person she thought she *should* be or the person she thought would be the most *impressive* to the House of Commons...her. She was now real and vulnerable and authentic.

She accessed the Power of Presence.

Over the past twelve years, I’ve worked with people from all types of industries. I started in education, and then transitioned to working with Fortune 500 companies and government agencies, and now I work primarily in the legal field.

Working with attorneys, however, is an entirely different ball game. The stakes are so much higher in the legal field that “being a better communicator” doesn’t cut it. For instance, you can have a well-organized opening statement, stand in the right spot, hold your hands correctly, and modulate your voice, but it’s all pointless without one very important thing:

You.

I can help you increase your awareness of eye contact, voice pattern, body language and breathing. But none of that matters if the real you refuses to show up.

Most attorneys are looking for a way to “get” jurors to believe them or to “get” more influence with a judge or “get” more persuasive. But persuasion and influence aren’t things you “get.” These things naturally happen once you access the power of presence. *Who you are* is much more important than what you say or do.

When you’re in trial, jurors don’t care about where you went to school or how smart you are. They want to know, can I trust this person? Is he or she for real? Presence is the way we communicate that we’re for real.

So what does it mean to have presence?

Presence starts with a willingness to show people your real self. And yet, if we are honest, perhaps we don’t want people to know who we really are, especially in court. If you’re a plaintiff attorney, you’re often the most hated person in the room. Why open yourself up to scorn and ridicule? So most attorneys do one of two things: they either hide who they are to protect themselves, or they push themselves on others, communicating arrogantly that they could care less what people think.

When we hide who we are, people don’t trust us. But when we’re arrogant, we turn people off. If you want to have presence you have to start with a decision to “show up.”

Once you decide to stop hiding or pushing, the next step is to get present. Often our attention is in the past or projecting into the future. I can’t tell you how many times I’ve watched an attorney conduct voir dire only to ask a question and then completely tune out to the answer. Why? They are furiously thinking of what to say next.

When we’re too busy listening to the voice in our heads instead of engaging with the people right in front of us, we communicate that we’re “somewhere else.” This is the opposite of presence, and can cause us to lose permission with jurors.

Finally, you can be authentic and present but still not *have* presence unless you communicate it. Presence requires an audience. This means you have to be able to get all this across. In other words, you can have an audience, and have a desire to connect with them, and still not be able to because you don’t know how. This is where approachable and authoritative nonverbals, good breathing and systematic eye contact come into play. Communication skills are how you communicate your presence to your audience in a way they can receive it.

So what does presence buy you?

Charisma.

Charisma is one of those magical traits that we readily recognize but struggle to define. Charisma is the ability to draw others to you so that they almost can't help but like you and follow you. If you don't have presence, however, there is nothing for others to be drawn to. You can't be attracted to something that doesn't exist.

When we communicate our presence, we invite people to join us. When we embody and communicate traits that people like and look for—confidence, authenticity, courage, warmth, credibility, and most important: personality—they come running.

As my brother-in-law said recently, when you have one person following you, you have a stalker; when you have several people following you, you have charisma. Presence is the first step to charisma. You've all got something people want: You. Now all you have to do is put it out there.

Dear Sari,

“There are a ton of books on how to conduct voir dire, but so much of voir dire is improvised! How does one get better at improvisation?”

Besides taking an improv class? (Which I highly recommend, by the way, for all trial attorneys.) The first step is to realize that we are all excellent improvisers; we just don't realize it. For example, I had lunch with an attorney friend several months ago and we were discussing voir dire. He said he hates voir dire because he always feels so unprepared, even if he IS prepared, due to the very fact that voir dire is a conversation and you can only prepare your side of the conversation! I looked at him and with all seriousness asked, “How much did you prepare for today's conversation?” He laughed. “Not at all,” he said.” I responded, “And yet you're doing so well!”

We improvise all the time: when we unexpectedly see someone in the hall, every time we pick up the phone, and when we dash off an email before a meeting. The reason it feels so different in trial is because the stakes are so high. So the way to get better at improvising is to realize you –already- improvise, all the time, you just need to get used to doing it in high stress situations.

For example, last October a group of trial attorneys attended our Trial College LIVE! event. The theme of the weekend was how to navigate chaos: we brought in Mary Kogen, a curiosity expert and rhythm trainer, and Daniel Rodriguez, an expert storyteller, to help our attorneys increase their trial skills. We put the attorneys in chaos whenever possible: asking them to walk in rhythm as we discussed curiosity, or to clap on certain syllables as we spoke nonsensical statements.

So no one was surprised when, after arriving in their courtroom best to face the mock jury on Saturday morning, I announced that **no one would conduct voir dire “normally.”** “No,” I said, “you have a choice: one of you may conduct voir dire with one shoe on and one shoe off, another must conduct voir dire holding a pillow for comfort, and someone else must conduct voir dire with their shirt untucked and their jacket turned inside out.” One attorney put her hair in pig tails and yet another wore a tie around his head. Everyone chose something distracting and “chaotic.” And in they marched, one limping because he only had one shoe, the other, pig tails bobbing up and down, and the rest looking like we'd found them wandering the streets and asked them if they'd like to try being lawyers for a day.

At first the jury thought it was a joke. “Is this for Halloween?” they asked. “Nope,” I replied, and gave no other explanation. We then started, and the attorneys performed beautifully, even though we had forced them out of their comfort zone.

By doing this, the attorneys increased their ability to improvise under stressful conditions. How?

They practiced presence. Trial isn't a scripted event. You will have witnesses go missing, defense arguments that surprise you, and judges who are having a bad day. If you want to up your game, you've got to practice remaining present and focused, no matter what trial (or Sari) throws at you. The attorneys were able to breathe and stay present and focused, teaching the jury to essentially ignore the distractions.

They stretched their boundaries. Can you still be "you" when things don't go your way? Are you bigger than your suit, your hairstyle, or your well-polished shoes? If you can do *voir dire* with a tie on your head, you can do *voir dire* under any circumstances. Forcing themselves out of their comfort zone showed them they are bigger than their circumstances.

They increased their credibility. Although you might think it decreases your credibility to be seen with your shirt un-tucked or with only one shoe, the fact of the matter is, your ability to conduct a thoughtful *voir dire* even while under stressful conditions communicates to the jury that *you've got this*. And that's the number one thing any audience wants from its presenter: the feeling you know what you're doing and have got everything under control, even when things get -out- of control.

It was amazing to watch the jury, who at first were distracted by the various, well, *distractions*, within minutes ignore the pigtails or missing shoe and really connect with the attorneys, each and every one of them.

So I ask you, **could you conduct *voir dire* with only one shoe?** I don't suggest you try this in actual court, but what I do suggest is that you practice staying centered and focused (breathing helps!) when life hits you with the unexpected so that when you're in trial you can do the same with your jury. You already know how to improvise, now practice dealing with whatever life –or trial- brings your way.

Dear Sari,

“I recently attended a seminar put on by [a very popular trial consultant]. He suggested I read my opening word for word, saying that to try and deliver it without notes would be a huge mistake. As someone who helps attorneys present their openings, what do you think?”

To be blunt, I think that’s horrible advice. Every bit of research on effective communication says that nonverbal communication: stance, voice pattern, gesturing, eye contact, etc., makes a bigger impact on the listener than verbal communication. That doesn’t mean that words aren’t important; of course they are. We spend a lot of time here at FORTE crafting the opening statement to get it just right. But if the words were the most important part of opening, why not just type it up, make several copies and have jurors read it themselves?

Opening statement is SO much more than a perfectly word-smithed speech. A few columns ago I talked about the intimate connection between voir dire and opening: voir dire is where you ask questions; opening is where you answer them. Voir dire is where you listen to jurors; opening is where jurors listen to you. And finally, voir dire is where you form the group; opening is where you lead the group. It is difficult to lead when you’ve got your nose in your notes.

Yes, jurors need to learn about the case in opening, and yes, it’s important that we frame trial themes, undermine the defenses, and discuss damages. But jurors are also **looking for a leader**. This process is foreign to them, and they are desperate for someone they can trust to get them through it. If you can’t even so much as make eye contact with them (because how could you, if you’re reading your opening word for word?) how can you expect them to trust you?

The fact of the matter is **we trust people, not words**. People are what make the words trustworthy and believable. This is why charismatic defense attorneys who do not have the facts on their side can win cases. We’re persuaded by personality, warmth, and yes, excellent presentation skills. If you can’t handle a presentation, how on earth can you handle an entire case?

There’s a reason trial happens live and not just via written word. **Who you are figures heavily into the equation**. Jurors need to get a sense of you personally to be able to trust what you’re saying. They won’t be able to do this, however, if you stand up and...*read*.

That said, it’s perfectly acceptable to use notes to jog your memory. But as I always say to my attorneys, practice your opening several times so that you don’t stumble over your words, but do NOT memorize it word for word. Jurors are skeptical of the overly polished presentation. They want a real human.

And yes, there are times it might be appropriate to read your opening. Say, when you've been given a case last minute and haven't had time to prepare, or you learned new facts the night before. But even then I would suggest reading your opening with well-placed eye contact, pausing and voice modulation.

But keep this in mind: You know your case. I've never met an attorney who couldn't talk about his or her case upside-down and sideways. So craft an organized opening, trust that you know your case and deliver it to your jury with confidence.

Dear Sari,

“I often try cases by myself, but when I try them with co-counsel or a second chair, how should I split the trial duties? Should one of us do voir dire and the other opening?”

Great question. With so few cases going to trial these days, it can be extremely tempting to share trial duties either out of a sense of fear, or because you both want as much trial experience as you can get. In general, it's fine to have different attorneys handle different witnesses. For example, in a recent case, the plaintiff responded much more positively to the second chair than the lead attorney when I ran her through her exam during witness preparation. I suggested in that case that he allow the second chair to handle her testimony during trial and he agreed. It worked well.

However I often recommend that attorneys –not- split voir dire and opening. Here's why: **Voir dire and opening are two sides of a conversation.** Voir dire is where we ask questions; opening is where we answer them. Voir dire is where we listen to jurors; opening is where jurors listen to us. Voir dire is where we form the group; opening is where we lead the group. This last one is of primary importance.

Attorneys often say to me, “I can never tell who the leader of the group is.” I respond, “That's because you haven't formed the group. If the group isn't formed, there can be no leader.” **The only time you get to form the group is in voir dire.** Groups are formed, managed and led primarily *nonverbally*. There are four ways to form the group:

- Get jurors looking at each other
- Get jurors talking to each other
- Get jurors doing things together
- Get jurors breathing together

Groups provide safety. When you form the group they begin to feel more comfortable and safe and they will associate that safety with you. Instead of feeling imposed upon, jurors start to feel a part of the process and engage more with you and each other. Because you're the one that formed them, they will look to you as the leader.

Therefore it makes no sense to have someone, who at this point is a complete stranger to the jury, present opening. What a way to destroy the good work you've done in voir dire! If you've formed the group and done a good job making jurors feel safe and comfortable they are now ready to return the favor to you and listen to your presentation of the case.

Stick with one attorney for both voir dire and opening and you'll find the jury will be more receptive to your case overall.

Dear Sari,

“One big struggle we plaintiff attorneys have is getting jurors to award non-economic damages. They want some sort of formula. How do you handle this?”

Your timing couldn't be better as this question just came up recently in John Coletti's admitted liability trial where a man had his leg ripped off by a garbage truck in downtown Portland. It's an interesting conundrum, isn't it? On one hand, jurors want a formula, but on the other hand, formulas often backfire. For example, it's not unusual to watch a mock jury deliberate and hear someone say, "They're asking for \$10,000,000. This guy will live 23 more years according to their experts. So let's see. Ten million divided by 23 is about \$435,000. Divide that by 12 and that's...holy hell that's over \$36,000 a month!"

This is dangerous.

How do we navigate this in trial? I firmly believe that you need to *tell jurors how to calculate damages*. So many attorneys throw up their hands and say, "No one can tell you how to do this, you just have to rely on your judgment." Uh, big mistake. As David Ball says, if you tell the jury that no one can tell them how to calculate damages, they hear: "It can't be done."

In this recent case here's how we handled it: staring in voir dire and pulling the theme all the way through closing we introduced the concept of price vs. value. In voir dire we asked, "Can something have value even if you paid very little for it? What should happen if someone destroys something "priceless?" Why are some things valued very high in our society, like a Picasso or a basketball player, and other things aren't?"

In opening, we tied economic damages to price, and non-economic damages to *value*. We know they're going to want to use a calculator so we told them when that was appropriate and when it wasn't. We said, "Economic damages is where you can use a calculator. This is where you look at 'price.' How much will it cost to get the plaintiff back on his feet? What accommodations will he need? How much will medical care cost? Non-economic damages is where you determine *value*. **You won't be able to use a calculator here.** This is where you have to decide how much value to place on something like no longer being able to walk your daughters down the aisle. Or no longer being able to do simple things like change a lightbulb without asking your neighbor for help."

The minute we start talking about how much things cost, we're in the "price" zone. We've got to get jurors into the "value" zone when discussing non-economic damages.

There's no perfect way to help the jury with non-economic damages, but I do think they need more help than we often give. And the jury seemed to agree in this case, returning a verdict of \$10.5 million in non-economic damages.

Dear Sari,

“As someone who works with a lot of trial attorneys, is there one thing that all of the great attorneys have in common?”

Yes. And no.

Several years ago, we held our first Voir Dire Studio. Four lawyers came together to workshop their specific cases with me on Friday and then conduct a voir dire with two sets of mock jurors on Saturday. The group included two plaintiff attorneys from Portland, one from Virginia, and a public defender from Montana. Some of the attorneys had only been practicing a handful of years, others, close to 20.

When Saturday arrived, the lawyers were sequestered in a separate room while the first set of mock jurors milled about, eating breakfast pastries and drinking coffee. At 9 a.m. sharp I invited the jury to take their seats and gave them their instructions. They would hear from each attorney for about 20 minutes, during which time they would be asked a variety of questions to determine whether they'd be a good juror for the particular case. When the attorney was finished, they'd be given a questionnaire to fill out that asked things like, “Was the attorney believable?” “Did you feel encouraged to speak up?” “What do you think this case was about?” They would then have an opportunity to address the lawyer with specific comments while I coached the attorney in real time.

I then went and fetched the attorneys. They all looked as though they were about to throw up, pass out, or both. As they filed into the “courtroom” some smiled at the jurors, others nervously walked past with their head down. When they presented their voir dire, some had shaky hands, others wandered too much or conversely, stayed frozen in one spot. But by the end of the day, all of the attorneys were able to do the one thing that matters most at trial.

Show up.

What do the best lawyers all have in common? **Nothing.** That is, nothing concrete like Oscar-worthy presentation skills or amazing legal brilliance or the ability to connect with jurors from the get-go. All those things help in trial, don't get me wrong, but some of the best trial attorneys of my acquaintance aren't skilled orators or even particularly brilliant.

What they are is authentic.

We tend to think that the ability to persuade comes down to a set of skills, but the truth is, people are more apt to trust us and our version of events when we simply **show them who we are.** This is why gimmickry of any kind utterly backfires in court; jurors feel manipulated.

So when this group of attorneys asked me whether they should button their coat or leave it open, or if they should start with “Good morning” or just get right to the point, I

asked, “What’s authentic to you?” There simply isn’t one “right” way to communicate at trial. Effective communication is going to look different for every attorney I encounter. Jurors will trust and believe an attorney with a wrinkled suit and shaky hands any day over a polished attorney who isn’t real. Whether we’re talking about Gerry Spence or Rick Friedman or Moe Levine, **the best trial attorneys are comfortable in their own skin.**

Dear Sari,

“I’ve heard you talk about how trial lawyers need to let go of their attachment to winning. I must admit this makes no sense to me. Can you clarify?”

When I tell attorneys they need to let go of winning, they accuse me of telling them to not care, to turn into a “robot,” or to do less than their best. Nothing could be further from the truth. You can really, really care, and still let go of winning. You can show up and be yourself and still let the outcome be what it will be. You can do your absolute best and realize that you can’t control how jurors will decide. **You can really, really want to win and still let go of the outcome. Not only can you, but you should.** How? By realizing that no matter how much you care, how much you prepare, how much you “want” **the outcome is ultimately out of your hands.** Period.

For example, last year my husband Kevin and I attempted to buy a house. I say attempted, because it was (and still is) a seller’s market, and buying a house in that kind of market is INSANE. Once a house pops up on the market, if you aren’t on some secret list that lets you know ahead of time, good luck being one of the first to make an offer. And even if you DO get the chance to make an offer, prepare to offer over list price to even be considered seriously by the sellers.

Kevin and I always said we would rather stick needles in our eyes than live in the suburbs, but changed our minds right quick once we had a kid and realized that life would now include several trips to said suburbs where the grandparents (and main childcare) live. Not to mention schools, walkable, safe neighborhoods and all the other things we never thought we’d have to consider. (We previously concerned ourselves with the latest greatest brunch spot and how far away we lived from concert venues. Sigh, those were the days.)

After falling in love with several houses online that were violently snatched from us by other buyers (how dare they!) we found a house that, for reasons unknown, no one else seemed to want. It had been on the market 90 days, an UNHEARD of amount of time in this market. “There has to be something wrong with it,” we thought as we drove to meet our realtor to do a walk through of this 4 bedroom, 3-bath home that could have easily eaten our small downtown condo for breakfast. As we drove up we were shocked to find a HUGE house, beautifully situated on the hill, with gorgeously landscaped grounds.

“I love it,” I said to Kevin as we walked through, falling in love with the big picture window, the hardwood floors, and the bedroom downstairs that would be a perfect home office. “Me too,” Kevin said dreamily, as he eyed the basement, doing measurements in his head as to what size TV he could fit on the wall.

As we drove away to look at the other homes our realtor wanted to show us, I panicked that someone would make an offer on this house while we were “wasting time” looking at the other, obviously subpar homes. This was MY house, I wanted it, and I wanted it NOW.

We ordered an inspection, and, again, due to this crazy market, had to wait a week for it to happen. Which in retrospect, was a godsend. Because as Kevin practically gnawed his fingers off waiting for inspection day to arrive, I got some perspective. Namely, **I LET GO.**

One of the things I work on with my attorneys quite a bit, is **attachment to outcomes**. I tell them, “You can want to win at trial, and you *should* want to win, **but you can’t make winning your ultimate goal**. Winning is out of your control. You can do everything possible *to* win, but ultimately you have to let go and just be in the moment, which is where you have the most power.”

I had to remind myself of this as we waited for the inspection. I want this house. REALLY want it. But if there are problems with the house, that’s out of my control. I had to let it go.

Even though I am not much of one for “woo woo” thinking, I do believe in energy. And as I told Kevin as we waited, “Look, the more desperate we get, the more energy we send out there that we’re willing to do ANYTHING to get this house and that, ultimately, will reduce our negotiating power.”

This is also true in court. The more you focus on winning, the more you communicate to jurors that you’ll do ANYTHING to win, and don’t you think jurors already think this? They think you’ll lie, cheat and steal to get a verdict. Sending out that energy can only hurt you, not help.

It’s possible to really *really* want to win (or get the house) and still let go of the outcome. I type this as I sit in that downstairs bedroom, now turned office, looking out onto my beautifully landscaped backyard.

How attached are you to “winning?” Can you let go of the outcome and be at peace with the here and now? I promise you that if you *can* let go you’ll find you have more energy to put toward the present moment, **which is where you have the most power.**



FORTE FEEDBACK FORM

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Since we're totally committed to improving our awesomeness, we'd really appreciate your feedback!	
Date/Place of Presentation: September 23, 2016, OWLS Fall CLE	
Name of Presenter(s):	
Help us out by checking the appropriate box below. We look forward to your brutal honesty! (Really, we do.)	
1. I'll use this stuff:	<input type="checkbox"/> Every day
	<input type="checkbox"/> A lot
	<input type="checkbox"/> Sometimes
	<input type="checkbox"/> Never
2. Nonverbal intelligence is:	<input type="checkbox"/> Life changing
	<input type="checkbox"/> A big deal
	<input type="checkbox"/> Interesting
	<input type="checkbox"/> Pointless
3. The presenter:	<input type="checkbox"/> Should be nominated for an award
	<input type="checkbox"/> Knew her stuff
	<input type="checkbox"/> I've seen worse
	<input type="checkbox"/> Bored me to tears
4. The handouts:	<input type="checkbox"/> Must have been designed by da Vinci
	<input type="checkbox"/> Were helpful
	<input type="checkbox"/> Sufficed
	<input type="checkbox"/> Will line my cat's litter box
5. Overall, this presentation:	<input type="checkbox"/> Rocked my world
	<input type="checkbox"/> Was pretty awesome
	<input type="checkbox"/> Was somewhat useful
	<input type="checkbox"/> Blew chunks
6. I'd recommend it:	<input type="checkbox"/> To strangers on the street, it was THAT good!
	<input type="checkbox"/> To people I know, for sure!
	<input type="checkbox"/> Maybe, but only if I was forced to.
	<input type="checkbox"/> I'd rather eat a bag of glass.
What else ya gotta get off yer chest?	

OREGON WOMEN LAWYERS

CLE EVALUATION FORM

Turn Up the Volume: Be a Communication Rock Star

September 23, 2016

Please complete this evaluation form and return at the end of the day. Thank you.

	Excellent	Good	Needs Improvement	Not Applicable
Overall quality of the CLE content	[]	[]	[]	[]
Overall quality of the speakers	[]	[]	[]	[]
Keynote Speaker: Sari de la Motte	[]	[]	[]	[]
Session: Sari de la Motte	[]	[]	[]	[]
Session: Rachel Beohm	[]	[]	[]	[]
Emcee: Laura Cooper	[]	[]	[]	[]
Written materials	[]	[]	[]	[]
Audio/Visual	[]	[]	[]	[]
Room where CLE was held – could you easily hear and see the speakers? Were you comfortable?	[]	[]	[]	[]

The most effective way for me to receive information about OWLS CLEs and programs is (check all that apply)	Articles in the AdvanceSheet	USPS Mailing	Email	Other <i>Please specify</i>
	[]	[]	[]	[]

Please list topics you would like to see in future OWLS CLEs or programs

Additional comments, more space on the back
